International Covenant on Civil and Political Rights

Distr.: General
25 April 2018

Original: English
English, French and Spanish only

Human Rights Committee

List of issues prior to submission of the second periodic report of Botswana*, **

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/BWA/CO/1), including any relevant statistical data and information on the mechanisms in place to review the process of implementation of previous recommendations.

2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations, including examples of cases in which the provisions of the Covenant have been referred to by national courts.

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemeated (art. 2)

3. Please provide information on steps taken to establish a national human rights institution, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles). Please describe how the State party is engaging civil society and other stakeholders in this process, including through the drafting of the Ombudsman Amendment Bill, in order to ensure that the national human rights institution is established in line with international standards.

4. In the light of the previous concluding observations (para. 10),[1] please specify steps taken to harmonize customary laws and practices with the provisions of the Covenant, in particular those that are detrimental to women's rights, and to raise awareness of the precedence of constitutional law over customary laws and practices. Please provide information on the training of judges, prosecutors and lawyers regarding the rights protected under the Covenant.

* Adopted by the Committee at its 122nd session (12 March–6 April 2018).

** The second periodic report was due in 2012. The State party accepted the simplified reporting procedure on 3 August 2017.

[1] Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.

Non-discrimination (arts. 2–3 and 25–26)

5. Please include information on any steps taken to ensure that the State party's legislation, including on matters of marriage, divorce, equality of property and other legal rights of spouses and related questions, prohibits all forms of discrimination in all spheres and on all grounds, as set out in the Covenant, and provides for effective administrative and judicial remedies. With reference to the Committee's previous concluding observations (para. 9), please provide information on measures taken to bring the Constitution, including section 15 (4), into line with articles 2–3 and 26 of the Covenant.

6. Please explain what measures have been taken to increase the representation of women in public life, including in Parliament, the *Ntlo ya Dikgosi* (House of Chiefs), local authorities and other decision-making bodies.

7. With reference to the Committee's previous concluding observations (para. 22), please provide information on efforts made to repeal section 164 of the Penal Code criminalizing same-sex sexual conduct, and indicate the number of persons who have been convicted under this provision and the sentences imposed on them. Please provide information on the legislative, public policy and awareness-raising measures in place to protect persons from discrimination and violence based on sexual orientation and gender identity, including protection from incitement to discrimination by registered religious organizations.

Violence against women, including sexual and domestic violence (arts. 2–3, 6–7 and 26)

8. Please describe the measures adopted to combat physical and sexual violence against women in the State party. Please report on the steps taken to criminalize marital rape and address the problem of underreporting by victims of rape and domestic violence, mainly due to fear of further violence or loss of financial support. Please describe training programmes provided to law enforcement officers and other relevant public officials on handling cases of violence against women. Please provide statistical information on (a) the number of complaints received and investigations and prosecutions carried out with regard to violence against women, including domestic violence; (b) sentences handed down to perpetrators and reparation granted to victims; and (c) the availability of shelters for victims of domestic violence. Please respond to reports that large numbers of schoolgirls are subjected to sexual harassment and violence on their way to school, and that no criminal or disciplinary sanction was imposed on a councillor in Sebina, who was accused of molesting and impregnating a 16-year-old girl.

9. Please provide information on whether traditional harmful practices that appear incompatible with the principle of gender equality and with articles 2–3 of the Covenant persist, including widowhood rites, the payment of *bogadi* (a dowry paid to the family of the bride) and the right of men to treat their wives like minors. Please describe any measures taken by the State party to eliminate such practices.

Right to life (art. 6)

10. With reference to the Committee's previous concluding observations (para. 13), please provide information on: (a) the legal conditions for the imposition of the death penalty; (b) the procedures for commuting death sentences to life imprisonment; (c) the number of death sentences handed down and of executions carried out during the reporting period; (d) the type of courts that handed down these sentences; (e) details of the crimes for which these sentences were handed down; and (f) the number of persons currently on death row. Please describe the work of the Advisory Committee on the Prerogative of Mercy and the cases it reviewed during the reporting period. Please report on measures adopted to ensure that advance notice of execution dates is given and that the bodies of executed persons are promptly returned to their families for private burial. Please also address the question of whether the death penalty is carried out in a manner that causes the least possible physical and mental suffering. Please report on any steps taken or planned to move towards declaring a moratorium on, and eventually abolishing, the death penalty, and

towards ratification of the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty.

Prohibition of torture and other cruel, inhuman or degrading treatment or punishment; liberty and security of person and treatment of persons deprived of their liberty (arts. 7 and 9–10)

11. In the light of the Committee's previous concluding observations (paras. 14–15), please indicate what steps have been taken by the State party to withdraw its reservation to article 7 of the Covenant and to include in its Penal Code a criminal offence of torture reflective of relevant international standards.

12. With reference to the previous concluding observations (para. 17), please specify what measures have been taken to reduce prison overcrowding, to improve the conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), to expand prisoners' visitation rights and to abolish the use of corporal punishment in prisons. Please provide details on any progress made towards the increased use of alternatives to imprisonment, such as electronic surveillance devices, parole and community service, and towards shortening the duration of pretrial detention. Please describe measures taken to protect and attend to the needs of persons in detention who are particularly vulnerable, such as women, persons with disabilities and persons with HIV/AIDS.

13. In the light of the previous concluding observations (para. 18), please describe mechanisms in place to hear complaints of torture and ill-treatment of prisoners, and report on measures to ensure the prompt and thorough investigation of all complaints of torture and ill-treatment and the prosecution and punishment of the perpetrators. Please provide an update on the operations of the Independent Police Complaints Commission. Please provide information on the number of complaints of torture or ill-treatment received, investigations conducted, verdicts handed down, penalties imposed and measures of rehabilitation and forms of redress provided.

14. Please describe the training regularly provided to law enforcement and security officers in the field of human rights and in respect of the documentation and investigation of cases of torture and ill-treatment, including the materials covered in the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol). Please also specify the training provided with regard to alternatives to the use of force and firearms.

Elimination of trafficking in persons (art. 8)

15. In the light of the Committee's previous concluding observations (para. 16), please provide information on measures adopted to combat trafficking in persons and forced labour. Please provide detailed information on the 2014 Anti-Human Trafficking Act and the Anti-Human Trafficking National Action Plan (2017–2020), and report on the number of complaints received, investigations conducted and convictions and punishments handed down under the 2014 Act. Please describe the efforts made to ensure that victims are identified, protected and referred to an appropriate service provider on a timely basis, and that they receive full reparation, including compensation and rehabilitation. Please indicate what specialized training is provided to law enforcement officers and other relevant actors in the field who may come into contact with cases of trafficking and victims thereof.

Refugees and asylum seekers (arts. 7, 9–10 and 13)

16. Please provide information on measures adopted to ensure that all persons applying for international protection are given access to fair and efficient asylum procedures, protection against refoulement and an independent appeal mechanism with suspensive effect against negative decisions on asylum. Please respond to reports that the rejection rate for asylum applications is 99 per cent and that the majority of cases are rejected solely on the basis of the concepts of "first country of asylum" or "safe third country". Bearing in mind the 2016 High Court decision that a number of Namibian refugees should not be repatriated until a case against the revocation order had been decided, please provide an

update on the situation of these refugees. What has been done to put an end to the alleged policy of arresting and indefinitely detaining refugees and asylum seekers, including children, at the geographically remote Duwki refugee camp and at the Francistown Centre for Illegal Immigrants? Please respond to reports that asylum seekers interned at the Francistown Centre have been mistreated. Please describe efforts made to facilitate access by asylum seekers and refugees to the labour market outside Duwki refugee camp.

17. Please provide information on the current status of the draft legislation on asylum and the process of consultation with civil society and relevant international organizations, such as the Office of the United Nations High Commissioner for Refugees, in order to ensure that the draft legislation is in line with international standards.

18. Please report on measures adopted to enact domestic legislation aimed at reducing and preventing statelessness and granting protection to stateless persons. What efforts have been made to provide legal guarantees for children born in the State party and who would otherwise be stateless to acquire nationality of Botswana and to include a provision in the nationality law that protects foundlings and children born at home, or in rural areas, against statelessness?

Right to a fair trial and independence of the judiciary (art. 14)

19. In the light of the Committee's previous recommendations (para. 20), please provide information on the work and on the financial and staffing situation of Legal Aid Botswana, a body created under the Legal Aid Act of 2013. Please indicate what steps have been taken to provide free legal assistance in all criminal cases, including non-capital cases, and in appropriate cases pending before customary courts.

20. With reference to the Committee's previous concluding observations (para. 21), please describe measures adopted to ensure that the customary law system and its courts are in line with article 14 of the Covenant and paragraph 24 of the Committee's general comment No. 32 (2007) on the right to equality before courts and tribunals and to a fair trial. Please report on efforts made to ensure adequate training of tribal judges, particularly pertaining to the Penal Code, the basis for their decisions in criminal cases, and to raise awareness of the right to appeal against customary court decisions through the civil court system.

21. Please report on measures taken to guarantee the independence and impartiality of the judiciary and to ensure that rules relating to the appointment and removal of judges are in line with the Basic Principles on the Independence of the Judiciary. Please provide detailed information on the suspension of four judges in October 2015, after they called for the impeachment of the Chief Justice. In addition, please comment on the reported judicial staffing shortages, which have resulted in a serious backlog of pending cases.

Freedom of expression and assembly (arts. 19–21)

22. Please report on measures taken to guarantee the right to freedom of expression and describe protection measures in place to ensure the safety of journalists and human rights defenders in the course of their work and in the exercise of their freedom of expression. Please respond to reports of undue government pressure over, and arrests of, journalists critical of the Government or covering sensitive subjects, such as in the cases of Sonny Serite, Outsa Mokone and Edgar Tsimane, or of the 2015 raid on the Botswana Gazette. Please indicate whether the State party is considering amending the act on whistle-blowers, which does not currently provide for protection for whistle-blowers cooperating with the media and the journalists who receive and report on information received from them. Please also indicate what measures have been taken to decriminalize defamation and to investigate the cyberattack on the independent newspaper Mmegi.

23. Please provide information on measures adopted to guarantee, in law and in practice, the right to peaceful assembly. Please respond to allegations that the police interfered with the Unemployment Movement protest led by Tlamelo Tsurupe, first by rejecting a request for a police permit, and then by using excessive force when arresting protesters and journalists.

Right to privacy (art. 17)

24. Please provide information on the legal framework governing the use of electronic surveillance by the police and other security agencies, and on the legal safeguards in place in that regard. Please respond to allegations that the scale of electronic surveillance has sharply increased in recent years and that its scope has been broadened considerably.

Rights of the child (arts. 7–8 and 24)

25. In the light of reports that 9 per cent of children in the State party are engaged in child labour, please describe measures adopted to address this issue. Please also specify measures in place to eradicate the sexual exploitation of children, and steps taken to amend the 2009 Children's Act to include commercial sexual exploitation in the definition of child trafficking, without requiring the use of force, coercion or movement.

26. In the light of the Committee's previous concluding observations (para. 19), please indicate what steps have been taken to repeal the provisions of the Children's Act of 2009 and the Education Act of 1967 that permit corporal punishment, and provide information on measures taken to explicitly prohibit corporal punishment in school, in the home, in the juvenile legal system and in any other setting. Please describe any efforts made to raise awareness among relevant professionals and parents about the harmful impact of corporal punishment on children.

Rights of minorities (arts. 12 and 25–27)

27. Taking into account the Committee's previous concluding observations (para. 23), please respond to reports that members of the San people have been forcibly relocated in relation to mining activities and that, following the High Court decision in *Roy Sesana and Others v. The Attorney General*, the State party imposed restrictions on the return to the Central Kalahari Game Reserve of the members of the San people formerly resident therein, such as permit requirements, and denied the returned residents of the Game Reserve essential government services, including access to water. Please also comment on reports indicating that, in August 2016, nine members of the Basarwa people were shot at by an aerial anti-poaching unit while hunting antelope, and that they were arrested, stripped naked and beaten while in detention. What measures have been adopted by the State party to guarantee the rights of indigenous groups, in particular the Basarwa, to their traditional land and natural resources, and to ensure respect for their right to engage in free, prior and informed participation in work relating to policies that affect them?

28. With reference to the Committee's previous concluding observations (para. 24), please provide detailed information on measures adopted to ensure that the process for selecting members of the *Ntlo ya Dikgosi* guarantees the fair representation of non-Tswana tribes. Please comment on reports that the Bogosi Act of 2008 discriminates against non-Tswana tribes, given that few non-Tswana tribes have been recognized under the Act and many non-Tswana tribes are unfamiliar with the *kgotla*, which is the primary decision-making structure under the Act and which has its origin in the Tswana culture.

29. Please respond to allegations that citizens who are members of minorities who are illiterate or do not speak English are discriminated against by reason of the language requirements introduced regarding elections to the National Assembly.

Dissemination of information relating to the Covenant (art. 2)

30. In the light of the Committee's previous concluding observations (para. 25), please provide information on the arrangements made to disseminate the Covenant and the Committee's concluding observations, so as to increase awareness among the judiciary and legal and administrative authorities, including the customary institutions, law enforcement officials, lawyers and academics. Please explain how civil society and non-governmental organizations have been and will be involved in this process.